

fundamental pleading defects and also fail to plausibly allege Credit Partners' and Cole's participation in the alleged underlying fraud.

The dismissal should be with prejudice, and Plaintiff should not be granted an opportunity to replead, given that Plaintiff has had ample discovery and opportunity to craft its allegations against Defendants based upon the action brought by Plaintiff against many of the same defendants sued in this action, which is now pending in the Texas state court (*D&T Partners, LLC vs. ACET Global, LLC, et al.*, No. DC-19-09828 District Court, Dallas County, 116th Jud. District) in which extensive discovery has taken place and trial is imminent. *See Great Plains Tr. Co. v. Morgan Stanley Dean Witter & Co.*, 313 F.3d 305, 329 (5th Cir. 2002) (affirming denial of leave to replead where "the complaint could have been drafted to withstand dismissal had there been underlying facts to support the claims").

Further, as to Credit Partners, absent the sparsely pled Counts I through III alleging civil violations of RICO, Plaintiff's Complaint fails to allege any basis upon which this Court can exercise personal jurisdiction over Credit Partners in Texas, and the remaining claim against Credit Partners should be dismissed pursuant to Rule 12(b)(2) upon dismissal of Counts I through III.

Additionally, if Counts I through III alleging civil violations of RICO are dismissed as to *all* defendants, then this Court should decline to exercise supplemental jurisdiction pursuant to 28 U.S.C. § 1367(c)(3) over Plaintiff's state law claims against Credit Partners and/or Cole pled in Counts IV and VI through VIII.

WHEREFORE, for these reasons, discussed more fully in the accompanying memorandum of law submitted in support hereof, Defendants respectfully submit that the Complaint should be dismissed.

Respectfully submitted,

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BY: /s/ Andrea L. Kim

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COLE

CERTIFICATE OF SERVICE

I hereby certify that on August 9, 2021, a copy of the foregoing was filed electronically by the EM/CMF System for the United States District Court for the Northern District of Texas [and served by mail on anyone unable to accept electronic filing]. Notice of this filing will be sent by e-mail to all parties by operation of the Court's electronic filing system [or by mail to anyone unable to accept electronic filing]. Parties may access this filing through the Court's system.

/s/ Andrea Levin Kim
Andrea Levin Kim